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NORCA INDUSTRIAL, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NORCA INDUSTRIAL, LLC, a New York
Limited Liability Company,

Plaintiff,

v.

ROBERT WREN, an individual; PRIMROSE
METALS, INC., a California corporation;
RICHARD RAYBIN, an individual; LIFETIME
CAPITAL GROUP, an unknown entity;
VICTORIA PICOLOTTI, an individual;

Defendants.

CASE NO. C 07 3425 EDL

**[PROPOSED] ORDER
GRANTING EX PARTE
APPLICATION OF PLAINTIFF
NORCA INDUSTRIAL, LLC FOR
TEMPORARY RESTRAINING
ORDER, EXPEDITED
DISCOVERY AND AN ORDER
TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Date: July 2, 2007
Time: 10:00 a.m.
Room: Clerk's Office, 16th Flr.

[PROPOSED] EX PARTE TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY
INJUNCTION, ETC - Case No. C 07 3425 EDL

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD**, on July 2, 2007, at
 2 10:00 a.m., this Court heard Plaintiff Norca Industrial Inc.'s ("Norca") *Ex Parte* Application for
 3 Temporary Restraining Order, Expedited Discovery, and an Order to Show Cause Re Preliminary
 4 Injunction ("Application"). Appearances were entered on the record. Based upon the
 5 Application, the Complaint, memorandum of points and authorities, declarations and exhibits
 6 submitted therewith and any papers filed in opposition thereto, the evidence submitted and any
 7 argument heard at the hearing, Norca's Application is **GRANTED**.

8 **THE COURT HEREBY FINDS THAT:**

- 9 A. Unless a temporary restraining order is issued, Norca will suffer irreparable
 10 injury;
 11 B. Such irreparable injury is imminent;
 12 C. Norca is likely to prevail on the merits of this action;
 13 D. The irreparable injury that Norca will suffer if a temporary restraining order is not
 14 issued outweighs any inconvenience that defendants might experience upon its issuance; and
 15 E. The Application and papers filed in support thereof were properly served on
 16 defendants.

17 **ACCORDINGLY,**

18 **I. ORDER TO SHOW CAUSE**

19 Defendants Robert Wren, Primrose Metals, Inc., Richard Raybin, Lifetime Capital Group
 20 and Victoria Picolotti (collectively referred to as "defendants") **ARE HEREBY ORDERED TO**
 21 **SHOW CAUSE** at ____ a.m/p.m. on _____, 2007, or as soon thereafter as counsel
 22 may be heard, in Department ____ of the above-captioned Court, located at 450 Golden Gate
 23 Avenue, San Francisco, California, why a preliminary injunction should not be issued against
 24 defendants, and each of them, and each of their agents, servants, employees, attorneys, entities
 25 working with defendants, and those in active concert and participation with them, including but
 26 not limited to Primrose Alloys, Inc., from directly or indirectly engaging in, committing or
 27 performing any and all of the following acts:
 28

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- 1 a. contacting, obtaining quotes, contracting with, accepting deliveries from or
- 2 doing business with Changwon (now "Posco Specialty Steel Co. Ltd.") directly or
- 3 through intermediaries;
- 4 b. disseminating, disclosing or using for any purpose plaintiff's confidential
- 5 and proprietary information and/or trade secrets including, but not limited to:
- 6 i. Norca's pricing information, pricing strategies and its pricing formulation
- 7 methods;
- 8 ii. Norca's proprietary credit insurance program;
- 9 iii. The list of manufacturing facilities used by Norca and the specific contact
- 10 person at each; the identities of the intermediaries used by Norca to contact
- 11 and negotiate with each such facility and the specific contact person for
- 12 each; the credit, payment terms, shipping, insurance and other requirements
- 13 demanded or accepted by each such facility; and Norca's evaluation of the
- 14 expertise, competence and reliability of each facility to manufacture
- 15 particular types of products to specification in a timely fashion;
- 16 iv. The list of Norca's customers and the specific contact names for each, the
- 17 product specifications and requirements for each and Norca's working
- 18 knowledge of the decision-making process for each customer;
- 19 v. Norca's proprietary software, which contains, among other things, Norca's
- 20 entire "trading package" with respect to the non-boiler tube business.
- 21 c. contacting or soliciting the companies on Norca's confidential list of customers
- 22 and suppliers;
- 23 d. representing that defendants, or any of them, have "replaced" Norca or
- 24 referring to Norca's customers and/or suppliers as defendants';
- 25 e. quoting, entering into or performing any contract derived from a request
- 26 for quote predating defendant Wren's termination;
- 27
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- 1 f. using the telephone and facsimile numbers (650) 344-3291 and (650) 344-
2 9241 or representing that these numbers belong to defendants;
- 3 g. publishing any of the text appearing on www.norca.com or language
4 substantially identical thereto on any website, including but not limited to,
5 www.primrose.com or in any of defendants' advertisements or promotional
6 materials;
- 7 h. disposing of or destroying any documents, records, files, proposals,
8 invoices, bills, customer lists, contact lists, ledgers, computer files, computer discs,
9 correspondence or other information sources, which contain or may contain any of
10 defendants' information regarding solicitation or servicing of Norca's customers or
11 suppliers or any of Norca's confidential and proprietary information and/or trade
12 secrets set forth in subsection (b) above or defendants' use or dissemination
13 thereof;

14 **II. TEMPORARY RESTRAINING ORDER**

15 **IT IS FURTHER ORDERED THAT** pending the hearing on the Order to Show Cause
16 set forth above, defendants, and each of them, and each of their agents, servants, employees,
17 attorneys, entities working with defendants, and those in active concert and participation with
18 them, including but not limited to Primrose Alloys, Inc., **ARE HEREBY TEMPORARILY**
19 **RESTRAINED** from directly or indirectly engaging in, committing or performing any and all of
20 the following acts:

- 21 a. contacting, obtaining quotes, contracting with, accepting deliveries from or
22 doing business with Changwon (now "Posco Specialty Steel Co. Ltd.") directly or
23 through intermediaries;
- 24 b. disseminating, disclosing or using for any purpose plaintiff's confidential
25 and proprietary information and/or trade secrets including, but not limited to:
- 26 i. Norca's pricing information, pricing strategies and its pricing
27 formulation methods;
- 28

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- 1 ii. Norca's proprietary credit insurance program;
- 2 iii. The list of manufacturing facilities used by Norca and the specific
- 3 contact person at each; the identities of the intermediaries used by
- 4 Norca to contact and negotiate with each such facility and the
- 5 specific contact person for each; the credit, payment terms,
- 6 shipping, insurance and other requirements demanded or accepted
- 7 by each such facility; and Norca's evaluation of the expertise,
- 8 competence and reliability of each facility to manufacture particular
- 9 types of products to specification in a timely fashion;
- 10 iv. The list of Norca's customers and the specific contact names for
- 11 each, the product specifications and requirements for each and
- 12 Norca's working knowledge of the decision-making process for
- 13 each customer;
- 14 v. Norca's proprietary software, which contains, among other things,
- 15 Norca's entire "trading package" with respect to the non-boiler tube
- 16 business.
- 17 c. contacting or soliciting the companies on Norca's confidential list of customers
- 18 and suppliers;
- 19 d. representing that defendants, or any of them, have "replaced" Norca or
- 20 referring to Norca's customers and/or suppliers as defendants';
- 21 e. quoting, entering into or performing any contract derived from a request for quote
- 22 predating defendant Wren's termination;
- 23 f. using the telephone and facsimile numbers (650) 344-3291 and (650) 344-9241 or
- 24 representing that these numbers belong to defendants;
- 25 g. publishing any of the text appearing on www.norca.com or language substantially
- 26 identical thereto on any website, including but not limited to, www.primrose.com
- 27 or in any of defendants' advertisements or promotional materials;
- 28

h. disposing of or destroying any documents, records, files, proposals, invoices, bills, customer lists, contact lists, ledgers, computer files, computer discs, correspondence or other information sources, which contain or may contain any of defendants' information regarding solicitation or servicing of Norca's customers or suppliers or any of Norca's confidential and proprietary information and/or trade secrets set forth in subsection (b) above or defendants' use or dissemination thereof;

IT IS FURTHER ORDERED THAT the Temporary Restraining Order set forth in Section II of this Order shall remain in effect until the date for the hearing on the Order to Show Cause set forth above, or such further dates as set by the Court.

IT IS FURTHER ORDERED THAT Norca shall be required to post a corporate surety bond by 4:00 p.m. on _____ in the amount of \$ _____.

IT IS FURTHER ORDERED THAT Norca's supplemental papers, if any, in support of the Application for an Order to Show Cause re Preliminary Injunction and Temporary Restraining Order and Order Expediting Discovery filed by Norca against defendants, shall be filed with the Clerk of this Court and served via fax or by personal service upon the attorneys for defendants before 4:00 p.m. on _____. Defendants' papers, if any, in opposition to Norca's Application shall be filed with the Clerk of this Court and served via fax or personally upon the attorneys for Norca before 4:00 p.m. on _____. Plaintiff's reply papers, if any, shall be filed with the Clerk of this Court and served via fax or personally upon the attorneys for defendants before 4:00 p.m. on _____.

IT IS FURTHER ORDERED THAT Norca may commence discovery immediately in this matter, as follows: (1) Norca may, immediately after service of this Order, notice the depositions of defendants and Primrose Alloys, Inc. upon five court days' notice; (2) Norca may, immediately after service of this Order, propound written discovery upon defendants requesting written responses and the production of documents within five court days after service of the request; and (3) Norca may, immediately after service of this Order, serve a subpoena directed to

1 Primrose Alloys, Inc., with responses and the production of documents within five court days after
2 service of the subpoena.

3 **IT IS FURTHER ORDERED THAT** defendants are hereby given notice that failure to
4 attend the hearing in person or by counsel or otherwise affirmatively respond shall result in
5 immediate issuance of the requested preliminary injunction to take effect immediately upon
6 expiration or dissolution of the Temporary Restraining Order set forth in Section II of this Order,
7 and shall otherwise extend for the pendency of this litigation relief upon the same terms and
8 conditions as comprise the Temporary Restraining Order. Defendants are hereby given further
9 notice that, upon service (via fax or personal) of this Order upon defendants or counsel for
10 defendants, they shall be deemed to have actual notice of the issuance and terms of such
11 preliminary injunction and any act by them in violation of any of the terms thereof may be
12 considered and prosecuted as contempt of this court.

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15 DATED: _____

UNITED STATES DISTRICT JUDGE

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